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FILED

2008 MAY 16 PM 3:55

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY YML DEPUTY

1 Lisbeth Bosshart (Cal. Bar. No. 201822)
 2 Stephen D. Morgan (Cal. Bar. No. 239345)
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 11 Attorneys for Plaintiff Paul T. Gefreh, trustee
 12 on behalf of Ramon Montilla Paterno and
 Georgia Lee Kennedy

13 **UNITED STATES DISTRICT COURT**
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

16 PAUL T. GEFREH, trustee, on behalf
 17 of Ramon Montilla Paterno and
 18 Georgia Lee Kennedy,

19 Plaintiff,

20 v.

21 KAY BAIN WEINER, an
 22 individual,

23 Defendant.

CASE NO.

'08 CV 0881 LAB JMA

COMPLAINT FOR INFRINGEMENT OF
 U.S. PATENT NOS. 6,135,342 AND
 6,196,440

DEMAND FOR JURY TRIAL

COMPLAINT FOR INFRINGEMENT
 OF US PATENTS 6,135,342 AND
 6,196,440

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05/16/2008

1 7. Georgia Lee Kennedy is the owner as inventor of all right, title and
2 interest in U.S. Patent No. 6,135,342, entitled "Method and Tool for Imprinting a
3 Pattern in a Solder" (the "'342 Patent" attached as Exhibit A), which issued on
4 October 24, 2000.

5 8. On information and belief, Weiner is engaged in the business of
6 using a method comprising the steps of copper foil wrapping the edges of glass
7 strips, abutting the seams, tinning a solder seam thereon, heating the seam, and
8 impressing molten solder seams with stamps to form decorative patterns including
9 as described in her book entitled *Solder Sculpting and Beyond*.

10 9. On information and belief, Weiner offers for sale and sells services,
11 products and publications using such method.

12 10. Plaintiffs are informed and believe, and on that basis allege, that
13 Weiner has directly infringed the '342 Patent by making, using, selling, offering to
14 sell in this judicial district, and elsewhere throughout the United States, products,
15 services, and publications embodying the patented inventions of the '342 Patent.
16 Weiner will continue to infringe the '342 Patent, in violation of 35 U.S.C. section
17 271(a), unless enjoined by this Court.

18 11. Plaintiff is informed and believes, and on that basis alleges, that
19 Weiner has been inducing, and/or contributing to the infringement of the '342
20 Patent and will continue to induce and/or contribute to the infringement of the '342
21 Patent, in violation of 35 U.S.C. sections 271(b) and (c), unless enjoined by this
22 Court.

23 12. As a direct and proximate consequence of Weiner's acts of
24 infringement, Plaintiff has been irreparably injured. Unless such acts and practices
25 are preliminarily and permanently enjoined by this Court, Plaintiffs will continue to
26 suffer additional and irreparable injury.

27 13. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. §238.
28

16. Weiner's infringement of the '342 Patent has been and continues to be willful and deliberate, in disregard of Plaintiff's rights in the '571 Patent.

21. Plaintiff is informed and believes, and on that basis alleges, that Weiner has directly infringed the '440 Patent by making, using, selling, offering to sell in this judicial district, and elsewhere throughout the United States, products,

1 services, and publications embodying the patented inventions of the '440 Patent.
2 Weiner will continue to infringe the '440 Patent, in violation of 35 U.S.C. section
3 271(a), unless enjoined by this Court.

4 22. Plaintiff is informed and believes, and on that basis alleges, that
5 Weiner has been inducing, and/or contributing to the infringement of the '440
6 Patent and will continue to induce and/or contribute to the infringement of the '440
7 Patent, in violation of 35 U.S.C. sections 271(b) and (c), unless enjoined by this
8 Court.

9 23. As a direct and proximate consequence of Weiner's acts of
10 infringement, Plaintiff has been irreparably injured. Unless such acts and practices
11 are preliminarily and permanently enjoined by this Court, Plaintiffs will continue to
12 suffer additional and irreparable injury.

13 24. Plaintiff is entitled to injunctive relief pursuant to 35 U.S.C. §238.

14 25. As a direct and proximate consequence of Weiner's acts of
15 infringement, Plaintiff has suffered damages, in an amount not yet determined, of at
16 least a reasonable royalty due to infringing acts by Weiner, and lost profits due to
17 loss of sales, profits, and potential sales that Plaintiff would have made but for the
18 infringing acts and practices of Weiner for which Plaintiff is entitled to relief
19 pursuant to 35 U.S.C. §284.

20 26. Weiner has been given actual notice of her infringement of the '342
21 Patent.

22 27. Weiner's infringement of the '342 Patent has been and continues to be
23 willful and deliberate, in disregard of Plaintiff's rights in the '571 Patent.

24 28. Weiner offers for sale and sells services, products and publications
25 using such method.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Weiner as follows:

A. That this Court issue preliminary and permanent injunctions pursuant to 35 U.S.C. §283 restraining, enjoining and prohibiting Weiner and her agents, employees, and attorneys, and any person in active concert or participation with her or who are acting under her direction, who receive actual notice of the injunction through personal service or otherwise, from making, using selling, offering for sale any product or products that infringe the '342 or '440 Patent.

B. That this Court issue preliminary and permanent injunctions pursuant to 35 U.S.C. §283 restraining, enjoining and prohibiting Weiner and her agents, employees, and attorneys, and any person in active concert or participation with her or who are acting under her direction, who receive actual notice of the injunction through personal service or otherwise, from inducing or contributing to the infringement of the '342 or '440 Patent.

C. That this Court grant judgment in favor of Plaintiff and award damages to Plaintiff adequate to compensate for the infringement by Weiner of the '342 and '440 Patents in an amount to be determined at trial, but in no event less than a reasonable royalty.

D. That it be adjudged that Weiner's infringement of the '342 and '440 Patents has been willful and that this Court enhances the award of damages for willful infringement, up to three times the amount of damages found, pursuant to 35 U.S.C. §284.

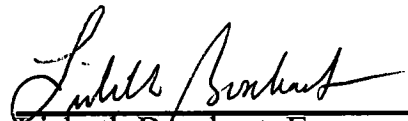
E. That this Court order against Weiner an assessment of interest on the damages so computed, and an assessment of costs, pursuant to 35 U.S.C. §284.

F. That this Court issue a declaration that this case is exceptional pursuant to 35 U.S.C. §285 and accordingly order an award of attorneys' fees and costs in this action.

1 G. That this Court afford Plaintiff such other and further relief as the
2 Court deems equitable and just.

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4 Dated: May 14, 2008

By:


Lisbeth Bosshart, Esq.
Attorneys for Plaintiff

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ORIGINAL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Paul T. Gefreh, trustee, on behalf of Ramon Montilla Paterno and Georgia Lee Kennedy

(b) County of Residence of First Listed Plaintiff Colorado

(EXCEPT IN U.S. PLAINTIFF CASES)

08 CV 0881 LAB JMA

(c) Attorney's (Firm Name, Address, and Telephone Number)

Shaub & Williams LLP, 12121 Wilshire Blvd., Ste 205, L.A., CA 90025, Tel. 310-826-6678

DEFENDANTS

Kay Bain Weiner, an individual

2008 MAY 16 PM 3:53

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

BY KNX DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. s. 284, 238

Brief description of cause:

Complaint for injunctive relief and damages caused by patent infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/15/2008

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

151024

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

AB 05/16/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

151024 - MB

**May 16, 2008
15:57:06**

Civ Fil Non-Pris

USAO #: 08CV0881 CIVIL FILING

Judge..: LARRY A BURNS

Amount.: \$350.00 CK

Check#.: BC3726

Total-> \$350.00

**FROM: PAUL T GEFREH, TRUSTEE VS
KAY BAIN WEINER**